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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs And Border Protection

[CBP Dec. 15-09]

Western Hemisphere Travel Initiative: Designation of an Approved Native American Tribal Card Issued by the Seneca Nation of Indians as an Acceptable Document to Denote Identity and Citizenship for Entry in the United States at Land and Sea Ports of Entry

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice.

SUMMARY: This notice announces that the Commissioner of U.S. Customs and Border Protection is designating an approved Native American Tribal Card issued by the Seneca Nation of Indians to U.S. and Canadian citizens as an acceptable travel document for purposes of the Western Hemisphere Travel Initiative. The approved card may be used to denote identity and citizenship of Seneca Nation of Indians members entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

DATES: This designation will become effective on [INSERT DATE PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Arthur A. E. Pitts, Director, Traveler Policies Division, Admissibility and Passenger Programs, Office of Field Operations, U.S. Customs and Border Protection, via e-mail at arthur.a.pitts@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Western Hemisphere Travel Initiative

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Pub. L. 108-458, as amended, required the Secretary of Homeland Security (Secretary), in consultation with the Secretary of State, to develop and implement a plan to require U.S. citizens and individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)) to present a passport or other document or combination of documents as the Secretary deems sufficient to denote identity and citizenship for all travel into the United States. See 8 U.S.C. 1185 note. On April 3, 2008, the Department of Homeland Security (DHS) and the Department of State promulgated a joint final rule, effective on June 1, 2009, that implemented the plan known as the Western Hemisphere Travel Initiative (WHTI) at U.S. land and sea ports of entry. See 73 FR 18384 (the WHTI land and sea final rule). It amended, among other sections of the Code of Federal Regulations (CFR), 8 CFR 212.0, 212.1, and 235.1. The WHTI land and sea final rule specifies the documents that U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico are required to present when entering the United States at land and sea ports of entry.

Under the WHTI land and sea final rule, one type of citizenship and identity document that may be presented upon entry to the United States at land and sea ports of

entry from contiguous territory or adjacent islands¹ is a Native American Tribal Card that has been designated as an acceptable document to denote identity and citizenship by the Secretary, pursuant to section 7209 of IRTPA. Specifically, 8 CFR 235.1(e), as amended by the WHTI land and sea final rule, states:

Upon designation by the Secretary of Homeland Security of a United States qualifying tribal entity document as an acceptable document to denote identity and citizenship for the purposes of entering the United States, Native Americans may be permitted to present tribal cards upon entering or seeking admission to the United States according to the terms of the voluntary agreement entered between the Secretary of Homeland Security and the tribe. The Secretary of Homeland Security will announce, by publication of a notice in the **Federal Register**, documents designated under this paragraph. A list of the documents designated under this paragraph will also be made available to the public.

A “United States qualifying tribal entity” is defined as a “tribe, band, or other group of Native Americans formally recognized by the United States Government which agrees to meet WHTI document standards.”² Native American tribal cards are also referenced in 8 CFR 235.1(b) which lists the documents U.S. citizens may use to establish identity and citizenship when entering the United States. See 8 CFR 235.1(b)(7).

The Secretary has delegated to the Commissioner of U.S. Customs and Border Protection (CBP) the authority to designate certain documents as acceptable border crossing documents for persons arriving in the United States by land or sea from within the Western Hemisphere, including certain United States Native American tribal cards. See DHS Delegation Number 7105 (Revision 00), dated January 16, 2009.

Tribal Card Program

¹ “Adjacent islands” is defined in 8 CFR 212.0 as “Bermuda and the islands located in the Caribbean Sea, except Cuba.” This definition applies to 8 CFR 212.1 and 235.1.

² See 8 CFR 212.0. This definition applies to 8 CFR 212.1 and 235.1.

The WHTI land and sea final rule allowed U.S. federally recognized Native American tribes to work with CBP to enter into agreements to develop tribal ID cards that can be designated as acceptable to establish identity and citizenship when entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP has been working with various U.S. federally recognized Native American tribes to facilitate the development of such cards.³ As part of the process, CBP will enter into one or more agreements with a U.S. federally recognized tribe that specify the requirements for developing and issuing WHTI-compliant tribal cards, including a testing and auditing process to ensure that the cards are produced and issued in accordance with the terms of the agreements.

After production of the cards in accordance with the specified requirements, and successful testing and auditing by CBP of the cards and program, the Secretary of Homeland Security or the Commissioner of CBP may designate the tribal card as an acceptable WHTI-compliant document for the purpose of establishing identity and citizenship when entering the United States by land or sea from contiguous territory or adjacent islands. Such designation will be announced by publication of a notice in the **Federal Register**. More information about WHTI-compliant documents is available at www.cbp.gov/travel.

Seneca Nation of Indians WHTI-Compliant Tribal Card Program

The Seneca Nation of Indians (Seneca Nation) has voluntarily established a program to develop a WHTI-compliant tribal card that denotes identity and U.S. or Canadian citizenship. On November 10, 2009, CBP and the Seneca Nation signed a

³ The Native American tribal cards qualifying to be a WHTI-compliant document for border crossing purposes are commonly referred to as “Enhanced Tribal Cards” or “ETCs.”

Memorandum of Agreement (MOA) to develop, issue, test, and evaluate tribal cards to be used for border crossing purposes. Pursuant to this MOA, the cards are issued to members of the Seneca Nation who can establish identity, tribal membership, and U.S. or Canadian citizenship. The cards incorporate physical security features acceptable to CBP as well as facilitative technology allowing for electronic validation of identity, citizenship, and tribal membership by CBP. In 2013, CBP and the Seneca Nation entered into two related agreements, a January 15, 2013 service level agreement and an April 15, 2013 security agreement. The former memorializes the technical specifications for the production, issuance and use of the card, and the latter addresses confidentiality and information sharing.

CBP has tested the cards developed by the Seneca Nation pursuant to the above agreements and has performed an audit of the tribe's card program. On the basis of these tests and audit, CBP has determined that the cards meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and citizenship for purposes of entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP's continued acceptance of the tribal card as a WHTI-compliant document is conditional on compliance with the MOA and all related agreements.

Acceptance and use of the WHTI-compliant tribal card is voluntary for tribe members. If an individual is denied a WHTI-compliant tribal card, he or she may still apply for a passport or other WHTI-compliant document.

Designation

This notice announces that the Commissioner of CBP designates the tribal card issued by the Seneca Nation in accordance with the MOA and all related agreements between the tribe and CBP as an acceptable WHTI-compliant document pursuant to section 7209 of the IRTPA and 8 CFR 235.1(e). In accordance with these provisions, the approved card, if valid and lawfully obtained, may be used to denote identity and U.S. or Canadian citizenship of Seneca Nation members for the purposes of entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.⁴

Dated: July 7, 2015.

R. Gil Kerlikowske,
Commissioner.

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⁴ The Native American Tribal Card issued by the Seneca Nation of Indians may not, by itself, be used by Canadian citizen tribal members to establish that they meet the requirements of section 289 of the Immigration and Nationality Act (INA) [8 U.S.C. 1359]. INA § 289 provides that nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race. While the tribal card may be used to establish a card holder's identity for purposes of INA § 289, it cannot, by itself, serve as evidence of the card holder's Canadian birth or that he or she possesses at least 50% American Indian blood, as required by INA § 289.